

REMARKS

The Official Action of May 11, 2009 and the prior art cited and relied upon therein have been carefully considered. The claims in the application are now claims 15-30, claims 19-30 having been withdrawn from consideration as being drawn to non-elected species. All of the present claims define patentable subject matter warranting their allowance. Favorable reconsideration and such allowance are respectfully urged.

The indication of allowability of claim 18 if rewritten in independent form is appreciated.

Claims 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fulterer (U.S. Patent No. 6,199,966) in view of Cirocco (U.S. Patent No. 5,951,132). Applicant respectfully traverses the prior art rejections of claims 15-17 found on pages 2-4 of the Office Action for the reasons discussed previously which and for the reasons discussed below.

Applicant is submitting herewith a statement by the inventor of the present application, Mr. Thomas Sagel. Mr. Sagel is the Chief Executive Officer and one of the owners of the assignee, Vauth-Sagel. According to Mr. Sagel's statement, the invention was designed to provide fittings for a tall cabinet, allowing its assembly and adjustment with simple tools, such as a screwdriver only. The combination of these fittings is referred to as a "mounting" in the patent application. Sagel Statement filed herewith, page 1.

As Mr. Sagel describes the invention, on page 2 of his statement, the main component of the mounting is the extension frame. It is designed as a rigid metal frame, the height and depth of which are slightly smaller than the inside

dimensions of the body of the tall cabinet. Shelves or storage trays are fixed on this frame at different heights. A one-part or multi-part cabinet front is attached at the front leg of the extension frame.

Telescopic rails guide the extension frame at the top and the bottom, so that it can be pulled out completely from the body of the cabinet. The construction of the lower telescopic rail is strong enough to support the entire weight of the loaded extension frame.

The process of assembly and adjustment is illustrated in more detail by the drawings of Appendix 1 attached to Mr. Sagel's statement, with steps 1 to 7.

Two adjusting screws are screwed into the lower telescopic rail with their screw heads directed upwards. The extension frame is plugged onto these screws during the assembly of the tall cabinet. The screws have a flange below their heads, at a distance corresponding to the height of the lower leg of the frame, on which the leg is supported. During assembly, the screw heads enter into mounting bores in the lower leg of the extension frame. These screw heads are conical, with a flat bottom. A locking latch is resiliently guided in the lower leg of the extension frame, and also possesses corresponding recesses for the screw heads. When the screw heads enter the lower leg, they slide on an inclined surface of the respective recess, and so the locking latch is moved forward.

When, during the process of plugging it on, the extension frame touches the flanges of the two adjusting screws, the screw heads have passed the locking latch. The latch is retracted underneath the flat heads of the screws, and thus fixes the extension frame on the telescopic rail. The locking latch is now positioned

underneath the screw head, thereby preventing the extension frame from being lifted up again from the telescopic rail.

The locking latch stands out slightly from the back of the lower leg of the extension frame. If the outer end of the locking latch is pushed, the two adjusting screws are released and the extension frame can again be detached from the lower telescopic rail.

The screw head is accessible from above through the bore in the lower leg. It presents a slot, so it can be turned with a screwdriver to adjust its height in the thread in the lower telescopic rail and thus the height of the flanges with respect to the telescopic rail. In this way the height of the extension frame can be precisely adjusted.

As the two adjusting screws are located at a wide distance from each other on the lower telescopic rail, the angle of the extension frame in relation to the lower telescopic rail can also be adjusted with high precision.

This combination of features is not taught, disclosed, or rendered obvious by the prior art.

The patent to Fulterer is directed to a mounting hardware for a tall-cabinet pullout. It shows in the embodiment of Figs. 10-15 only one adjustment screw (15). However, with this screw it is not possible to adjust the height of the central frame 40 to a great extent. With this screw, only the angle of the frame with respect to the lower telescopic rail can be adjusted, as the frame is pivoted on the telescoping rail about the axis of a bolt 36 (see col. 7, lines 57-59). This adjustment screw does not serve to adjust the height of the extension frame; in fact, height adjustment of the frame is not provided. See Sagel Statement, page 2, first

paragraph. The screw 15 of Fulterer, Fig. 12, extends threadedly through the spar 12 that connects the U-shaped profiles 8 (col. 6, lines 35-39 and col. 6, lines 1-2) and engages the underside of rail 16. The rail 16 is pivoted to the pull-out rail 4 about the axis of bolt 36.

Applicant does not agree with the Examiner's statement that adding a second screw would be a mere duplication of the essential working parts of a device. How would a second screw in the embodiment of Figs. 10-15 of Fulterer be incorporated therein? There appears to be no need for a second screw nor would it be apparent to one of ordinary skill in the art how it would be incorporated into the existing structure of Fulterer. If one tried to put a second screw along the length of the rail 4 of Fulterer, it would interfere with operation of the existing screw 15 since the two screws would be at different distances from the pivot point (bolt 36). Besides, the bolt 15 is connected by way of fish plate 38 and bearing disk 32 to the rail 16 (see col. 7, lines 50-51). If an additional screw were turned to try to move the rail 16, the first screw 15 would prevent such movement. Thus, the provision of a second screw in the embodiment of Figs. 10-15 of Fulterer would not have been practical or obvious to one of ordinary skill in the art.

In fact, the modification of Fulterer to use a second screw to meet Applicant's claimed combination, would have created a modification of the device in Fulterer that would have prevented it from operating for its intended purpose. See MPEP §2145, III, and 2143.01, V ("If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)."). See also, MPEP §2143.01, VI ("If the

proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959) (Claims were directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. The court reversed the rejection holding the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate." 270 F.2d at 813, 123 USPQ at 352.).")

The first embodiment of Fulterer, Figs. 1-9, does utilize two screws 15, Fig. 3. However, these screws are located side by side, not along the length of the rail 4. In this embodiment, the rail 16 is also pivoted about the axis of bolt 14. Again one of ordinary skill in the art would not provide duplicate screws in this embodiment because such screws would not have been needed. This embodiment also fails to disclose a locking latch that is spring biased and slidably engaged against the screws as set forth in claim 15.

The patent to Fulterer was further modified in the rejection to provide a slidable spring biased latch as taught by the newly cited Cirocco patent in lieu of the latch provided by members 33, 37 of Fulterer. However, the members 33 and 37 as

well as member 38 engaging the underside of disk 32 of Fulterer is used to lock or latch the rail 16 to the rail 4, Figs. 12, 14. First of all, Cirocco does not teach a slidable latch engaging screws that are part of a rail. Second, it is not seen how a slidable latch such as shown in Cirocco could be used in Fulterer, inasmuch as the rail 16 of Fulterer during assembly is placed such that the bolt 36 slides into the gap between plates 35 of the rail 4 and the spring pressed bolt 33 in the screw 15 snaps into the groove 37 and the plate 38 engages under the disk 32 of the screw.

Providing a slidable, spring biased latch on the rail 16 of Fulterer in lieu of the members 33, 37, 38 that somehow would engage under the disk 32 yet the rail 16 still supported on top of the disk 32 would not have been obvious to one of ordinary skill in the art, absent impermissible hindsight reference to Applicant's disclosure.

Furthermore, claim 16 recites that each of the screws has a support surface that engages under the bottom side of the lower frame segment and that the latch engages a recess between the support surfaces and the heads of the screws. The modification of Fulterer by Cirocco would not provide support surfaces on the screws that engage under the bottom side of the lower frame segment and that the latch engages a recess between such support surfaces and the heads of the screws, since the bottom of the rail 16 of Fulterer rests on top of the disk 32 of the screw 15, which disk 32 is at the top of the screw 15. Thus, there would be no recess between the head and the support surface into which the latch engages.

The Examiner has further mentioned that "the inclusion of a second adjustment screw between slidable structures is well known in the art" and lists two U.S. Patents and states that "adequate motivation to perform such a modification can be found in the desire to provide additional structural support to another portion

of the upper rail. As such, applicant's arguments to the contrary are not found persuasive".

Applicant notes that the Examiner did not use any of these patents in the rejection as part of the asserted combination of references that would allegedly have rendered the claimed invention obvious. That is because they are unrelated to the subject matter at hand. The Oogami patent is directed to pivoting motion of a window sash and the Bowers patent is a device that uses two screws but only one of which is for adjustment, the other screw being for locking purposes. As they are unrelated, they also cannot serve to have provided the required motivation to modify the Fulterer patent in the asserted way, as one of ordinary skill in the art would not have looked to that art to find solutions to problems encountered in the art of making furniture mounting hardware.

Furthermore it would seem that if one of ordinary skill in the art were to have been motivated to provide the Fulterer patent with additional structural support, then the head of the screw would have been made with greater surface contact, not by using more screws. As noted above, the use of more screws in a manner as claimed by Applicant would make Fulterer inoperable for its intended purpose.

Applicant respectfully submits that the claimed invention patentably defines over the cited prior art on the basis of the structural differences between the cited prior art and the claimed invention identified above.

Favorable reconsideration and allowance are earnestly solicited.

Respectfully submitted,

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